



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

OCT - 5 2007

Jane Moscovitz  
Moscovitz & Moscovitz, PA  
Mellon Financial Center  
1111 Brickell Avenue, Suite 2050  
Miami, FL 33131

RE: MUR 5903  
William Scott DeLoach

Dear Ms. Moscovitz:

On March 7, 2007, the Federal Election Commission notified your client, William Scott DeLoach, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and publicly available information, the Commission, on September 11, 2007, found that there is reason to believe Mr. DeLoach knowingly and willfully violated 2 U.S.C. § 441b, a provision of the Act. At the same time, the Commission merged the previous enforcement matter involving Mr. DeLoach, MUR 5822, into this matter. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.


If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard  
Chairman

Enclosures

Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3  
4

5 **Respondent: William S. DeLoach**  
6  
7

**MUR: 5903**

8 **I. BACKGROUND**

9 This matter originated with a complaint filed by Maria M. Garcia alleging that PBS&J  
10 Corporation ("PBS&J"), violated the Federal Election Campaign Act of 1971, as amended (the  
11 "Act") by reimbursing the campaign contributions of its employees and their family members.  
12 The Complainant alleges that PBS&J, through a succession of former senior executives officers  
13 and accounting personnel, including the complainant, "knowingly" made prohibited corporate  
14 contributions to various political committees from the 1990s through the 2002 election by  
15 reimbursing personal contributions and the contributions of others in violation of 2 U.S.C.  
16 §§ 441h(a) and 441f.<sup>1</sup>

17 PBS&J is a Florida-based government contractor that provides a range of services related  
18 to transportation, environmental, construction management, and civil engineering. In late March  
19 2005, a PBS&J auditor reported to the Audit Committee that the company was the victim of  
20 embezzlement. Shortly thereafter, William S. DeLoach, the Chief Financial Officer, identified  
21 himself as one of the participants in the embezzlement scheme. Mr. DeLoach explained to the  
22 company how he, along with Maria Garcia, PBS&J's Business Information Systems Manager,  
23 and Rosario Licata, PBS&J's Accounts Payable Manager, conspired to embezzle more than \$35  
24 million by issuing company checks to themselves, diverting money from the company healthcare  
25 benefit fund into secret bank accounts, charging personal expenses on the company credit card,  
26 and concealing the theft of these funds by altering and fabricating the company's books. In

<sup>1</sup> The Commission in MUR 5822 previously found reason to believe that Mr. DeLoach knowingly and willfully violated 2 U.S.C. § 441f based on similar facts.

1 connection with this embezzlement, Mr. DeLoach, Ms. Garcia and Ms. Licata pled guilty to a  
2 felony count of conspiracy to commit mail fraud on September 28, 2006. Mr. DeLoach also pled  
3 guilty to a felony violation of 2 U.S.C. § 441f, admitting that he knowingly and willfully made  
4 \$11,000 in illegal contributions to the Martinez for Senate Committee through six straw donors  
5 on October 4 and 5, 2004.

6 The complaint alleges that, in addition to the 2004 contributions reimbursed by Mr.  
7 DeLoach, PBS&J, through various corporate officers and employees, engaged in a "pattern of  
8 decade(s) long illegal campaign violations, including reimbursement of respondent's employees,  
9 friends and spouses for political contributions." In addition to Mr. DeLoach, the complaint  
10 alleges that Ms. Licata and Richard Wickett, former Chief Financial Officer and Chairman of the  
11 Board of Directors, were active participants in the contribution reimbursement scheme. The  
12 complainant alleges that she was instructed by senior managers to reimburse employee campaign  
13 contributions by preparing false documents with fictitious descriptions for the disbursements.  
14 The complaint states that in March 2002, PBS&J reimbursed a \$2,000 contribution made by  
15 James Breland, a PBS&J executive, to Sen. Max Cleland's reelection campaign.

16 Additional criminal filings involving the same actors indicate the mechanics and extent of  
17 the potential violations. On March 8, 2007, criminal charges alleging, among other things,  
18 conspiracy to commit mail fraud and making false statements stemming from a corporate  
19 reimbursement scheme that began in 1990, were filed against Mr. Wickett and H. Michael Dye, a  
20 former PBS&J Chief Executive Officer. These documents allege that in 1990, Mr. Wickett and  
21 Mr. Dye instructed their respective secretaries to open bank accounts entitled "PBS&J Out of  
22 State PAC," but not to include the accounts in PBS&J's financial records. Mr. Wickett and Mr.  
23 Dye then allegedly instructed their secretaries to have any reference to PBS&J removed from the

1 checks issued from these accounts. Thereafter, Mr. Wickett and Mr. Dye would approve  
2 corporate disbursements to these accounts, and then use the funds to make contributions to  
3 principal campaign committees. In other instances, Mr. Wickett and Mr. Dye would make  
4 personal campaign contributions and then authorize PBS&J to make reimbursements through the  
5 "Out of State PAC" bank accounts.

6 By 2000, the scope of the corporate scheme grew to encompass additional PBS&J  
7 employees. According to the indictment, in 2000 and 2001 Mr. Wickett and Mr. Dye arranged  
8 for certain PBS&J officers and directors to receive bonuses, but were informed that \$10,000 of  
9 each bonus had to go to PBS&J's political action committees. In 2002, Mr. Wickett approached  
10 PBS&J Regional Sales Managers and District Directors and asked them to make campaign  
11 contributions to specific candidates in amounts ranging from \$500 to \$2,000. Mr. Wickett then  
12 caused PBS&J to reimburse these contributions with notations such as "mileage reimbursement"  
13 and "business development expense." Although the overall scope of the violation is not clear at  
14 this time, the transactions detailed in the indictment involve over \$20,000 in corporate and  
15 reimbursed contributions.

16 Finally, although it is unclear when Mr. DeLoach, an "up and comer in the company,"  
17 joined the contribution reimbursement scheme, it appears he began participating in the broader  
18 embezzlement scheme in 1999. By 2003, Mr. DeLoach, along with Ms. Garcia and Ms. Licata,  
19 established a separate "PBS&J PAC" account unrelated to the company and began diverting  
20 company funds to this account. Given that Mr. DeLoach has pled guilty to reimbursing \$11,000  
21 in campaign contributions in 2004, it is likely that the funds to make the reimbursement came  
22 from corporate funds.

1 All told, currently available information suggests that between 1990 and 2004, PBS&J  
2 used corporate funds to reimburse over \$30,000 in campaign contributions. This amount does  
3 not include any contributions made by PBS&J officers or directors as a result of the 2000 and  
4 2001 bonuses or the approximately \$44,000 in contributions made to federal candidates by Mr.  
5 DeLoach, Ms. Garcia, or Ms. Licata that may also have been reimbursed through the scheme.

6 **II. DISCUSSION**

7 Corporations are prohibited from using corporate resources to engage in campaign  
8 fundraising activities. *See* 2 U.S.C. § 441b(a). A corporation can only act through its directors,  
9 officers, and agents, and may be held liable for the acts of an employee within the scope of the  
10 employment and that benefit the corporate employer. *See United States v. Wallach*, 935 F.2d  
11 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of*  
12 *Private Corporations* § 30 (Supp. 2004). *See, e.g., Liquid Air Corp. v. Rogers*, 834 F.2d 1297,  
13 1306 (7th Cir. 1987). In addition, section 441b(a) prohibits any officer or director of any  
14 corporation from consenting to any expenditure or contribution by the corporation.

15 Available information supports the conclusion that Mr. DeLoach consented to the use of  
16 corporate resources to make campaign contributions. By creating a separate bank account and  
17 then funneling corporate funds into the account, Mr. DeLoach assisted PBS&J in making  
18 thousands of dollars in campaign contributions over a period of up to five years. In addition, as  
19 the scheme continued, the apparent scope broadened to include additional officers and members  
20 of the board of directors. News accounts and publicly available information suggest that Mr.  
21 DeLoach, an "up and comer in the company," joined the contribution reimbursement scheme  
22 sometime between 1999 and 2004. In addition, the scheme broadened again in 2000 and 2001 to

1 encompass selected officers and board members who were told to reserve a part of their bonus  
2 for political activity.

3       The criminal proceedings against PBS&J's former officers and employees suggest that  
4 Mr. DeLoach knowingly and willfully violated the Act. The knowing and willful standard  
5 requires knowledge that one is violating the law. *See Federal Election Commission v. John A.*  
6 *Dranesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986); *see also* Federal  
7 Prosecution of Election Offenses (6<sup>th</sup> Ed., 1995). An inference of a knowing and willful act may  
8 be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United*  
9 *States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). Not only did PBS&J corporate  
10 executives and employees establish separate bank accounts to make political contributions, but  
11 they disguised reimbursements to employees by categorizing them as "mileage reimbursements"  
12 and "business development expenses."

13 **III. CONCLUSION**

14       For the foregoing reasons, the Commission finds reason to believe William S. DeLoach  
15 knowingly and willfully violated 2 U.S.C. § 441b(a).